

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENERAL STEAMSHIP AGENCIES,)
INC.,)

Plaintiff(s),)

v.)

SEA BRIDGE PROJECTS, INC.,)

Defendant(s).)

No. C05-3207 SBA (BZ)

**ORDER SCHEDULING HEARING ON
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

TO ALL PARTIES AND COUNSEL OF RECORD:

By order dated May 2, 2006, the above matter was referred to Magistrate Judge Bernard Zimmerman to issue a report and recommendation regarding plaintiff's motion for default judgment. **IT IS HEREBY ORDERED** that pursuant to plaintiff's notice of motion and Rule 55(b)(2) of the Federal Civil Rules of Civil Procedure, a hearing on plaintiff's motion for default judgment is set for **Wednesday, June 7, 2006, at 10:00 a.m.** in Courtroom G, 15th Floor, Federal Building, San Francisco, California, 94102.

Plaintiff states that at the hearing it will present

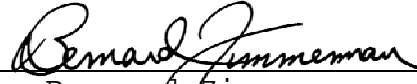
1 proof that it is entitled to \$161,295.94 in damages, that
2 defendant has not appeared in this action and that defendant
3 is not an infant or incompetent person or in military service
4 or otherwise exempted from 50 App. U.S.C. § 501 et seq. of the
5 Servicemembers' Civil Relief Act (the "Act"). Compliance with
6 the Act may not be satisfied on information and belief. See
7 50 App. U.S.C. § 521(b)(1); United States v. Simmons, 508
8 F.Supp. 552 (E.D. Tenn. 1980)(interpreting 50 App. U.S.C. §
9 520(1), predecessor to 50 App. U.S.C. § 521(b)(1)). The
10 public website <https://www.dmdc.osd.mil/scra/owa/home> provides
11 the current active military status of an individual and has
12 instructions on obtaining certificates of service or non-
13 service under the Act.

14 Plaintiff should be prepared to prove its damages by
15 competent testimony or other admissible evidence. If
16 plaintiff intends to prove damages by affidavits or
17 declarations, the affiant or declarant should have personal
18 knowledge of all matters to which she testifies. For all
19 evidence, proper foundations must be established. For an
20 explanation of the evidentiary requirements for proving
21 damages in a default case, the parties are encouraged to
22 consult Chapter Six of Civil Procedure Before Trial by William
23 W. Schwarzer, A. Wallace Tashima, and James M. Wagstaffe.

24 Defendant should attend the hearing if it contests the
25 validity or amount of plaintiff's claim. Seven days before
26 the hearing, on **Wednesday, May 31, 2006**, plaintiff shall file
27 a declaration setting forth in detail all steps taken to serve
28

defendant with notice of this hearing.¹

Dated: May 5, 2006



Bernard Zimmerman
United States Magistrate Judge

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¹ Plaintiff claims that defendant is not entitled to notice of the hearing. Some circuits have ruled that the three days' notice required by Fed. R. Civ. P. 55(b)(2) only applies to parties that have appeared. See Zuelzke Tool & Engineering Co. v. Anderson Die Castings, Inc., 925 F.2d 226, 231 (7th Cir. 1991)("In this case no appearance in district court was made by Anderson prior to entry of the default judgment and no notice was due Anderson under Rule 55(b)(2)."); Taylor v. Boston and Taunton Transp. Co., 720 F.2d 731, 733 (1st Cir. 1983)("Taylor was not required to give B & T notice of its application for judgment . . . because B & T had not entered an appearance."). The Ninth Circuit, however, has not adopted such a rule and suggests that "due process . . . requires notice and an opportunity to be heard . . . before a deprivation of a property interest." Kingvision Pay-Per-View Ltd. v. Lake Alice Bar, 168 F.3d 347, 352 (9th Cir. 1999). Therefore, the court will require plaintiff to give notice of the hearing to defendant.